IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 158 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-NO.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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STATE OF GUJARAT - Appellant(s)
Versus
SOMAT MANJI SOLANKI VAGHRI - Opponent(s)

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Appearance :
PUBLIC PROSECUTOR for Appellant(s) : 1,
MR PK SHUKLA for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 22/06/2006

ORAL JUDGMENT

Heard learned counsel Shri I.M.Pandya and Shri P.K.Shukla, learned counsel appointed for the

respondent-original accused. The appellant-State of Gujarat has preferred this appeal under Section 378 of the Criminal Procedure Code, 1973 challenging the order of the acquittal dated 12/11/2002 passed by the Judicial Magistrate First Class, Una in Criminal Case No.1314 of 1997 acquitting the present respondent, original accused for the offences committed under Section 447 and 379 of Indian Penal Code.

This Court (Coram:B.N.Mehta, J.) has granted relief and admitted the appeal.

The case of the prosecution was that on 8/5/1996 between 18:00 hours to 24:00 hours, the accused committed theft of plastic line (patti) admeasuring 200 feet valued at Rs.300/- and flexible vire admeasuring 300 meter valued at Rs.300/- by trespassing into the balcony of the premises of the complainant. It was also alleged that accused sold out that material to one Sahed Ismilesha Rehmansha. The value of the material was more than Rs.2400/-. The Trial Court acquitted the accused for want of the necessary evidence and apathy shown by the

complainant. The order of the acquittal dated 12/11/2002 in the criminal case is impugned in the present appeal.

Learned counsel Shri I.M.Pandya has submitted that the order deserves to be quashed and set aside in view of the fact that the Trial Court ought to have issued warrant for procuring the presence of witness. The Court has passed an order of acquittal only for want of evidence as time and again the matter was adjourned for want of witnesses.

Shri Shukla has submitted that Rojkam indicates that the Trial Court has time and again issued summons and kept the matter for recording evidence. The case was instituted in the year 1997 and after giving enough opportunity, ultimately the order of acquittal came to be passed as no witness turned up. Shri Shukla has submitted that this order cannot be said to be erroneous in view of the fact that the Rojkam unequivocally show that enough opportunity was granted to the prosecution.

The submission of Shri Shukla deserves consideration and acceptance. The Rojkam contains various dates indicating that the matter was kept for recording evidence. The record of the Criminal Case No.1314 of 1997 show that the Trial Court afforded opportunities to the complainant and prosecution for proving the case. The record also indicates that many a time even the complainant has remained absent. The complainant was required to be summoned before the Court. The witnesses were also summoned time and again but they did not remain present. The prosecution did not take any further action for procuring the presence of witnesses in support of the case of the prosecution.

The provision of Section 258 of the Criminal Procedure Code empowers the Trial Court to drop the proceedings in such a circumstances. The order impugned in the present appeal therefore, does not suffer from any infirmity requiring any interference there with. This Appeal therefore, deserves to be dismissed and is accordingly dismissed.

(S.R.BRAHMBHATT, J.)

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